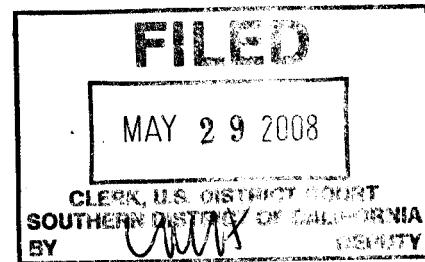


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13  
 14 UNITED STATES DISTRICT COURT  
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ1510  
 17 Plaintiff, )  
 18 v. ) STIPULATION OF FACT AND JOINT  
 19 DAVID CASTELLANOS-FLORES, ) MOTION FOR RELEASE OF  
 20 Defendant. ) MATERIAL WITNESS(ES) AND  
 21 \_\_\_\_\_ ) ORDER THEREON  
 22 \_\_\_\_\_ ) (Pre-Indictment Fast-Track Program)

23 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES  
 24 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E.  
 25 Mason, Assistant United States Attorney, and defendant DAVID CASTELLANOS-FLORES, by  
 26 and through and with the advice and consent of defense counsel, Hanni M. Fakhoury, that:

27 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
 28 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
 29 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
 30 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
 31 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
 32 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

33 //

34 //

35 CEM:lg:5/18/08

1        2.    Defendant acknowledges receipt of a plea agreement in this case and agrees to  
 2 provide the signed, original plea agreement to the Government not later than five business days  
 3 before the disposition date set by the Court.

4        3.    Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 5 before **June 16, 2008**.

6        4.    The material witnesses, Fredy Rosas-Rangel, Isabel Cruz-Hernandez and Norberto  
 7 Hernandez-Aguila, in this case:

8            a.    Are aliens with no lawful right to enter or remain in the United States;  
 9            b.    Entered or attempted to enter the United States illegally on or about  
 10 May 13, 2008;

11            c.    Were found in a vehicle driven by defendant at the San Ysidro, California,  
 12 Port of Entry (POE), and that defendant knew or acted in reckless disregard of the fact that they were  
 13 aliens with no lawful right to enter or remain in the United States;

14            d.    Were paying or having others pay on their behalf an unknown amount up to  
 15 \$3,500 to others to be brought into the United States illegally and/or transported illegally to their  
 16 destination therein; and,

17            e.    May be released and remanded immediately to the Department of Homeland  
 18 Security for return to their country of origin.

19        5.    After the material witnesses are ordered released by the Court pursuant to this  
 20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
 21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
 22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
 23 attack, that:

24            a.    The stipulated facts set forth in paragraph 4 above shall be admitted as  
 25 substantive evidence;

26            b.    The United States may elicit hearsay testimony from arresting agents  
 27 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
12 immediate release and remand of the above-named material witness(es) to the Department of  
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT  
United States Attorney

17  
18 Dated: 5/29/08.

  
CALEB E. MASON  
Assistant United States Attorney

20  
21 Dated: 5/22/08.

  
HANNI M. FAKHOURY  
Defense Counsel for  
DAVID CASTELLANOS-FLORES

23  
24 Dated: 5/22/08.

  
DAVID CASTELLANOS-FLORES  
Defendant

## ORDER

2       Upon joint application and motion of the parties, and for good cause shown,  
3       **THE STIPULATION** is admitted into evidence, and,  
4       **IT IS ORDERED** that the above-named material witness(es) be released and remanded  
5       forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 5/29/08

  
\_\_\_\_\_  
United States Magistrate Judge